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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/048,243	01/24/2002	Gerold Tebbe	011310	2695
22876	7590	10/07/2003	EXAMINER	
FACTOR & PARTNERS, LLC 1327 W. WASHINGTON BLVD. SUITE 5G/H CHICAGO, IL 60607			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/048,243

Applicant(s)

TEBBE, GEROLD

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Specification*

1. The specification is objected to for its reference to specific claim numbers. See page 1, line 31, page 2, lines, 15, 27, and 36, page 3, lines 4, 9, 21, 24, 31, and 35, and page 4, line 6. It is improper format to refer to the claims within the body of the specification, since the subject matter of claim can change with amendments. For example, Preliminary Amendment A cancelled the referenced claims 1-10. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 14-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 14 and 16 are indefinite because it is unclear what the difference is between "cotton" and "cotton fibers." Cotton inherently comes in fiber form.

5. Claims 17-19 are indefinite because it is unclear what the difference is between a "fleecy material" and a "fleece layer." Additionally, it is unclear how the pile material of claim 15 is also a fleecy material.

*Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 11, 12, 18, 19, 23, 25, and 26 are rejected under 35 USC 102(e) as being anticipated by US 5,879,487 issued to Ravella.

Ravella discloses an absorbent article comprising an absorbent needlepunched nonwoven material (i.e., fleece) (abstract and col. 6, lines 16-46). The article may include a fluid and moisture impermeable outer layer comprising a plastic film (col. 9, lines 26-50). Said article may further include a slip-resistant outer layer overlying said impermeable outer layer (col. 9, line 66-col. 10, line 11). Additionally, a body-side cover layer made of polyester (i.e., hydrophobic) knit fabric may overlie the absorbent material (col. 10, lines 12-16). Thus, claims 11, 12, 18, 19, 23, 25, and 26 are anticipated by the cited Ravella patent.

8. Claims 11, 12, 18-20, and 23 are rejected under 35 USC 102(b) as being anticipated by DE 3 640 374 issued to Tebbe.

Tebbe discloses an absorbent article comprising a layer of absorbent material having microcapsules therein (English abstract). The absorbent material may be a “paper fleece, fiber fleece, felt, cellulose, cellulose fleece or a fabric of wool or cotton.” The absorbent material has a thin outer layer that is impervious to water. Additionally, the absorbent material is attached to

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an adhesive tape (i.e., non-slip layer) for placement of said article on clothing. The microcapsules contain perfumes and inflammation inhibitors. Thus, claims 11, 12, 18-20, and 23 are anticipated.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 24 is rejected under 35 USC 103(a) as being unpatentable over the cited Ravella reference.

Ravella teaches a non-slip outer layer preferably made of polyvinyl chloride, but fails to explicitly teach said layer is made of rubber (col. 10, lines 8-11). However, non-slip materials made of rubber are well known in the art. Applicant is hereby given Official Notice of this fact. As such, it would have been obvious to one skilled in the art to select a rubber non-slip material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Thus, claim 24 is rejected.

11. Claim 27 is rejected under 35 USC 103(a) as being unpatentable over the cited Ravella reference in view of GB 2 335 627 issued to Hedenberg et al.

Although Ravella teaches a body-side covering, the reference is silent with respect to spot bonding said covering to the absorbent layer. However, this method of attaching layers is well

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known in the art. For example, Hedenberg discloses an absorbent article comprising an absorbent layer and a liquid permeable cover layer, wherein at least one of the two layers includes thermoplastic fibers (abstract). The two layers are attached by spot bonding which fuses the thermoplastic material (abstract). Hence, it would have been obvious to one skilled in the art to attach the covering of Ravella to the absorbent layer by the known means of spot bonding, as taught by Hedenberg. Motivation to do so would be to produce a uniform bond across the layers (as opposed to stitching) and to eliminate the need for an adhesive layer which could affect the absorbency and stiffness of the absorbent laminate. Thus, claim 27 is rejected over the cited prior art.

12. Claims 25-27 are rejected under 35 USC 103(a) as being unpatentable over the cited Tebbe reference in view of the cited Ravella and Hedenberg references.

Tebbe is silent with respect to the use of a body-side covering. However, said coverings are well known in the art of absorbent articles, as evidenced by Ravella and Hedenberg. Thus, it would have been obvious to add a covering to the absorbent article of Tebbe in order to produce an absorbent article having good wicking properties and is non-irritating to the user's skin. Hence, claim 27 is rejected over the prior art.

13. Claim 20 is rejected under 35 USC 103(a) as being unpatentable over the cited Ravella reference in view the cited Tebbe reference.

Although Ravella is silent with respect to the inclusion of microcapsules, said inclusion is well known in the art of absorbent articles. For example, Tebbe, as noted above, discloses the use of microcapsules in an absorbent article. Thus, it would have been obvious to one skilled in

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the art to employ microcapsules in the absorbent article of Ravella to reduce odor. Thus, claim 20 is rejected.

14. Claims 11-17, 23, and 24 are rejected under 35 USC 103(a) as being unpatentable over US 5,612,113 issued to Irwin, Sr.

Irwin discloses a carpet comprising pile yarns attached to a primary backing, a thin film that is impermeable to liquids, and a secondary backing attached to the backside thereof (abstract).

Irwin is silent with respect to the fiber type employed for the pile yarns. Thus, one must look to the prior art for selection of fibers. Applicant is hereby given Official Notice that known carpet fibers, such as wool and cotton, are inherently absorbent. It would have been obvious to one skilled in the art to select known absorbent fibers for the carpet of Irwin since it has been held that selection of a known material on the basis of its suitability for the intended use requires only routine skill in the art. *In re Leshin*, 125 USPQ 416. Hence, claims 11-16 are rejected.

With respect to claims 23 and 24, Irwin teaches secondary backings, such as woven fabrics or foam cushions may be applied adjacent to the impervious barrier layer. These secondary backings will inherently provide some slip resistance. Additionally, it would have been obvious to one skilled in the art to employ a rubber secondary backing since said backings are well known in the art of carpet flooring. Applicant is hereby given Official Notice of this fact. Motivation to do so would be to enhance the slip resistance of the carpet and/or to add cushion and durability. Therefore, claims 23 and 24 are rejected as being obvious over the cited prior art.

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15. Claims 20-22 are rejected under 35 USC 103(a) as being unpatentable over the cited Irwin patent in view of JP 05-051870 issued to Kawasaki and US 4,908,252 issued to Carnahan et al.

Irwin is silent with respect to the use of microcapsules. However, said use is well known in the art of pile fabrics. For example, Kawaski employs microcapsules to "flavor" a pile cloth by adhering microcapsules containing said flavor with a resin binder to the pile fibers (English abstract). Additionally, Carnahan applies microcapsules containing a fragrance to a pile fabric (abstract). Thus, it would have been obvious to one of ordinary skill in the art to employ microcapsules to the Irwin invention in order to delivery a fragrance or odor control. Therefore, claims 20-22 are rejected as being obvious over the cited prior art.

### ***Conclusion***

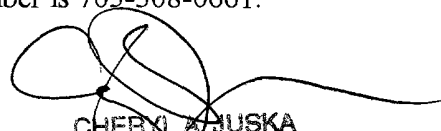
16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

cj  
September 30, 2003

  
CHERYL A. JUSKA  
PRIMARY EXAMINER